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**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

No. 76-82

FAMOUS FOODS, INC.,
Petitioner,

v.

GENERAL FOODS CORPORATION,
Respondent.

**Brief In Opposition
to the Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

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INDEX

	<u>Page</u>
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	6
I. The Decision in the Instant Case is not in Conflict with <i>Zenith Radio Corp. v. Hazeltine</i> or any other Decisions of this Court	6
II. The Decision in the Instant Case is not in Conflict with Applicable Decisions of any other Court of Appeals	12
III. The Decision in the Instant Case is in Accordance with Pennsylvania Law	14
IV. The Instant Case Does Not Present any Important Question of Federal Law which should be settled by this Court	16
CONCLUSION	23

TABLE OF CITATIONS

	<u>Page</u>
<i>Brill's Estate</i> , 337 Pa. 525, 12 A.2d 50, cert. denied, 311 U.S. 713 (1940)	14
<i>Cady v. Mitchell</i> , 208 Pa. Super. 16, 220 A.2d 373 (1966)	15
<i>Dobbins v. Kawasaki Motors Corp.</i> , 362 F. Supp. 54 (D. Ore. 1973)	21
<i>D'Oench, Duhm & Co. v. F.D.I.C.</i> , 315 U.S. 447 (1942)	11
<i>Duffy Theatres v. Griffith Consol. Theatres</i> , 208 F.2d 316 (10th Cir. 1953), cert. denied, 347 U.S. 935 (1954)	20
<i>Emery v. Mackiewicz</i> , 429 Pa. 322, 240 A.2d 68 (1968)	14
<i>Erie R. Co. v. Tompkins</i> , 304 U.S. 64 (1938)	10
<i>In re F.H. McGraw & Company</i> , 473 F.2d 465 (3d Cir.), cert. denied, 414 U.S. 1022 (1973)	15
<i>McClelland's Appeal</i> , 430 Pa. 284, 242 A.2d 438 (1968)	14
<i>Penn Mutual Life Insurance Co. v. Ashton</i> , 93 F.2d 565 (10th Cir. 1937)	19
<i>Redel's, Inc. v. General Electric Company</i> , 498 F.2d 95 (5th Cir. 1974)	10, 12, 17, 18
<i>Restifo v. McDonald</i> , 426 Pa. 5, 230 A.2d 199 (1967)	15
<i>Robert F. Felte, Inc. v. White</i> , 451 Pa. 137 302 A.2d 347 (1973)	14
<i>S. E. Rondon Co. v. Atlantic Richfield Co.</i> , 288 F. Supp. 879 (C.D. Cal. 1968)	22

	<u>Page</u>
<i>Solar Electric Corp. v. General Electric Co.</i> , 156 F. Supp. 51 (W.D. Pa. 1957)	22
<i>Suckow Borax Mines Consolidated v. Borax Consoli- dated, Limited</i> , 185 F.2d 196 (9th Cir. 1950), cert. denied, 340 U.S. 943 (1951)	20
<i>Taxin v. Food Fair Stores, Inc.</i> , 287 F.2d 448 (3d Cir.), cert. denied, 366 U.S. 930 (1961)	20
<i>The Southern New England Distributing Corporation v. Admiral Corporation</i> , 1965 Trade Cas. ¶71,471 (D. Conn. 1965)	19
<i>Three Rivers Motors Company v. The Ford Motor Company</i> , 525 F.2d 885 (3d Cir. 1975) ..	4, 5, 8, 9, 10
<i>Union Pacific Ry. Co. v. Artist</i> , 60 F. 365 (8th Cir. 1894)	19
<i>United States v. Yazell</i> , 382 U.S. 341 (1966)	9
<i>Virginia Impression Products Co. v. SCM Corpora- tion</i> , 448 F.2d 262 (4th Cir. 1971), cert. denied, 405 U.S. 936 (1972)	11, 17, 20
<i>Wm. A. Smith Contracting Co., Inc. v. Travelers Indemnity Company</i> , 467 F.2d 662 (10th Cir. 1972)	15
<i>Zenith Radio Corp. v. Hazeltine Research, Inc.</i> , 401 U.S. 321 (1971)	6

QUESTIONS PRESENTED

I. WHETHER THE DECISION IN THE INSTANT CASE IS IN CONFLICT WITH *ZENITH RADIO CORP. V. HAZELTINE* OR ANY OTHER DECISIONS OF THIS COURT.

(See Section A.1 of Petition for Certiorari)

II. WHETHER THE DECISION IN THE INSTANT CASE IS IN CONFLICT WITH APPLICABLE DECISIONS OF ANY OTHER COURT OF APPEALS.

(See Sections A.2 and B of Petition for Certiorari)

III. WHETHER THE DECISION IN THE INSTANT CASE IS IN ACCORDANCE WITH PENNSYLVANIA LAW.

(See Section A.2 of Petition for Certiorari)

IV. WHETHER THE INSTANT CASE PRESENTS ANY IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

(See Sections B and C of Petition for Certiorari)

STATEMENT OF THE CASE

This is an antitrust action brought by a distributor against the manufacturer in which a general release given by the distributor, Famous Foods, Inc., to the manufacturer, General Foods Corp., was held by the United States District Court for the Western District of Pennsylvania and the Third Circuit Court of Appeals to be an effective bar against plaintiff's claim.

From June 1958 to September 1972 petitioner operated as a General Foods institutional coffee distributor in the Pittsburgh area under a written agreement. It also handled General Foods institutional dry grocery products, such as Jello. Over 70% of the volume of petitioner's business activities under the agreement involved institutional coffee, a highly perishable item handled fresh-ground in paper bags, known in the trade as "H&R" (Hotel and Restaurant) or "bag" coffee.

Petitioner sold General Foods products to its own customers, known in the trade as "DTS" (Down-the-Street) accounts, and also acted according to the written agreement as a distributor of General Foods products under the MFSA program of General Foods to certain General Foods customers known as "MFSA" (Multiple Food Service Accounts) customers. This special marketing program had been created and was operated by respondent to meet the demands of large multi-unit institutional coffee and food products purchasers, such as Holiday Inns, Saga Food Service Co., et al. MFSA accounts designated by respondent on the basis of certain qualifying standards of size and volume consumption were direct customers of General Foods, and were sold food products at special prices recognizing their volume consumption status. In order to accommodate these customers, particularly with reference to the delivery of the highly perishable bag coffee, delivery

of the coffee and dry grocery items sold by General Foods to the MFSA's at their several operating locations was made by distributors such as Famous Foods in the locality of the operating locations from the inventory stock of the distributor.

For such delivery service Famous Foods received from respondent a fixed delivery and service allowance to cover the cost of warehousing the inventory and delivering the goods from it, and rendering service to the institutional customers' coffee-brewing equipment in accordance with the usual custom of the trade. Famous Foods also received from General Foods a credit redeemable in cash or as an offset against obligations to General Foods for the inventory cost of the goods delivered to the MFSA for the account of General Foods. Payment for the goods delivered to the MFSA customers was made by them to General Foods, which bore all credit risks, the obligations of warranties and other vendor responsibilities created by operation of law. Famous Foods received nothing from the MFSA customers.

In early 1972, petitioner Famous Foods requested that General Foods purchase petitioner's General Foods coffee distribution business and General Foods agreed to do so. The written agreement was terminated and the word "Cancelled" written across the face of the document at the closing of the sale on September 7, 1972. Petitioner also simultaneously executed a general release in favor of General Foods. The terms of the release which had been submitted to petitioner on July 14, 1972 almost two months before closing explicitly set forth General Foods' intention to be released from "all claims . . . connected with . . . the operation of Famous Foods." The release agreement recited that "Famous has been a distributor of certain institutional products of General Foods . . ." and provided that the parties did "mutually release each other from any and all

claims, liabilities or other obligations either party ever had, now has or may hereafter have against or to the other" (with three specifically enumerated exceptions not material hereto).

As is set forth in the Opinion of Judge Gourley for the Western District Court, the release in the instant case was almost identical to a release which was considered by the Western District of Pennsylvania and the Third Circuit Court of Appeals in the case of *Three Rivers Motors Company vs. The Ford Motor Company*, 525 F.2d 885 (3d Cir. 1975), a very similar antitrust situation in which the Court held that such a release was an effective bar to an antitrust claim, rejecting a suggestion that extrinsic evidence be permitted from the releasor to the effect that there was no intention that the release should extend to antitrust claims. If there was any difference between the two cases it was that in the instant case there was no question that the petitioner, Famous Foods, was thoroughly familiar with all of the details of the operation of the MFSA marketing program, which is claimed by petitioner to be a violation of the antitrust laws, while in the *Three Rivers Motors Company* case the plaintiff contended that it was unfamiliar with certain of the facts upon which it based its claim of violation of the antitrust laws by Ford Motor Company. The claim in the instant case is that the MFSA program achieved a vertical price fixing arrangement because it is claimed that Famous Foods sold the General Foods products to the MFSA customers, rather than General Foods effecting the sale. The merits of the claim of course were not considered by the courts below in the course of adjudicating the validity of the release.

After petitioner sold its coffee distribution business to General Foods it continued to do business for about nine months, until June 1973 when it went out of business

completely. During that period it had no written agreement with General Foods, but it was recognized by General Foods as an institutional wholesaler of General Foods dry grocery products, and it resold such products to Down-the-Street accounts. It also voluntarily participated in delivery of dry grocery products for the account of General Foods to MFSA customers of General Foods, though not required by any contractual agreement to do so. Although business relations were renewed between petitioner and respondent after the September 7, 1972 closing of the sale by petitioner to respondent of its coffee distribution business, petitioner's status vis-a-vis respondent was different, the scope of its product line was different and its responsibilities to respondent were different. The structure of the MFSA marketing program as to dry grocery products only was similar to the MFSA program as to coffee, but there were differences of significance related to the different status of petitioner (wholesaler rather than distributor with territorial responsibility), the products handled (relatively imperishable) and the services required of petitioner (delivery only, with no servicing of operating equipment).

On the basis of the general release, the District Court granted partial summary judgment in favor of General Foods. The court held that the antitrust claims of Famous Foods arising prior to September 7, 1972, the date of the release, were barred by the release. The Third Circuit Court of Appeals affirmed in a per curiam opinion, citing *Three Rivers Motors vs. Ford Motor Company*, 522 F.2d 885 (3d Cir. 1975).

ARGUMENT

I. THE DECISION IN THE INSTANT CASE IS NOT IN CONFLICT WITH ZENITH RADIO CORP. V. HAZELTINE OR ANY OTHER DECISIONS OF THIS COURT.

Petitioner has cited only a single decision of this Court, *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971), with which the instant Third Circuit decision (or more accurately *Three Rivers Motors, supra*,) is alleged to be in conflict.

Petitioner asserts that *Zenith* requires that "federal common law . . . govern interpretation of *all* aspects of releases in antitrust litigation" (Petition of Certiorari, p.8.). Not only is this claim at variance with petitioner's argument below,¹ but even the most cursory reading of *Zenith* reveals that federal law was held to be applicable in that case only on a single narrow issue arising out of the unique facts there presented. The rationale for the *Zenith* decision is totally inapplicable to the facts and issues presented in the instant case.

In *Zenith* Justice White rejected the rule which had been applied by the Court of Appeals that a release of one co-conspirator in an antitrust case automatically releases other co-conspirators not parties to the release, absent express reservation of rights against the others. Rather, Justice White adopted the rule that, in antitrust litigation, the intent of the parties to the release determines whether a release of one co-conspirator releases other co-conspirators not parties to the release. Justice White pointed out that this rule had been adopted in the tentative draft of the Second Restatement of Torts, and that it was the rule most consistent with the aims

¹In the brief (p. 24) which it presented to the Third Circuit in the instant case, petitioner expressly conceded that *Zenith* did *not* require that federal law govern the interpretation of releases in antitrust cases.

and purposes of the antitrust laws. Applying the rule to the facts before him, Justice White concluded that the parties to the release did not intend to release co-conspirators who were not parties to the release.² Even if the *Zenith* were deemed a rule of "federal common law", though the Court in *Zenith* used no such term, the rationale for applying "federal common law" in *Zenith* was clearly applicable only to the particular facts of that case.

The Court in *Zenith* was concerned about the plight of a victim of an antitrust conspiracy carried out by many conspirators in many states. In the absence of a uniform rule regarding the effect of a release of one conspirator upon the other conspirators, the antitrust plaintiff would be unable to predict whether a single release might automatically release unnamed co-conspirators in some states but not in others. The net effect would be to discourage the use of releases and thus to promote litigation, a state of affairs the Court viewed as undesirable. Thus a uniform rule was deemed necessary to cover the limited situation presented in *Zenith*. There is absolutely no suggestion in *Zenith* that such a uniform rule is necessary to cover *all* aspects of the interpretation of releases in antitrust cases.

If the Third Circuit Court of Appeals in the instant action had held that a release of one co-conspirator would, in the absence of an express reservation of rights, automatically release other co-conspirators not parties to the release, it would be appropriate to argue that the instant decision was in conflict with *Zenith*. No such decision has been rendered by the Third Circuit since the instant action has nothing whatsoever to do with the effect of a release of one co-conspirator on other unnamed co-conspirators.

²Justices Harlan and Stewart, concurring in the result, noted that on the facts, the Court need not even reach this issue. They would have held that the defense was waived because not timely raised.

No conspiracy of the type presented in *Zenith* has been alleged here; unlike the situation in *Zenith*, here only two parties were involved. The only issue involved in the instant case was the effect that the release of an alleged wrongdoer has in a suit brought against that wrongdoer. Furthermore, in *Zenith*, the party who sought to take advantage of the release was not a party to it, unlike the instant case where the person released was the defendant in the basic lawsuit. The District Court and Court of Appeals held in this case, on the authority of *Three Rivers Motors Company vs. Ford Motor Company*, 522 F.2d 885 (3d Cir. 1975), that the intent of the parties, as expressed in the unambiguous language of the release and without reference to extrinsic "evidence" proffered by the releasor that he did not mean the release to cover this claim, determined the effect of the release. That unambiguous language was held to bar plaintiff's antitrust claims for the period prior to September 7, 1972.

Even though the objectives sought to be achieved and the issue in *Zenith* were different from those involved in the case at bar, the results in each are in complete harmony as to the proper rule to be applied to evaluate a release. It is therefore difficult to understand the suggestion in petitioner's argument that the holding on the merits in *Zenith*—that the intent of the parties governs the effect of the release upon unnamed co-conspirators—is in conflict with the holding here—that the intent of the parties, as expressed in the unambiguous language of the release, governs its validity as between those two parties. Whether the rule enunciated in the instant case is described as a "state" rule or as a federal common law rule, the result is consistent with the holding in *Zenith*.

Since the substantive doctrine of *Zenith* is essentially identical to that applied in the instant case, petitioner's argument is reduced upon analysis to a contention that

identical results were reached by different routes. It is apparently petitioner's view that this Court in *Zenith* applied a "federal common law" rule while the District Court and Third Circuit Court of Appeals in the instant case did not.

A federal rule is not required here, as the Court thought it was in *Zenith*, to ensure predictability in determining the effect of a release. That the effect of the release would be governed by Pennsylvania law was always entirely predictable. In fact, it was only in the Petition for Certiorari that petitioner for the first time suggested that Pennsylvania law was inapplicable to determine the validity of the instant release. Indeed, petitioner argued strenuously before the District Court that Pennsylvania law governed, and respondent concurred. On appeal, it was again undisputed that Pennsylvania law governed. The sole issue was what the Pennsylvania law was. Only after petitioner's interpretation of Pennsylvania law was rejected by both the District Court and the Court of Appeals did petitioner seek to argue that Pennsylvania law was not applicable, and that some vague "federal common law" was.

Petitioner asserts that the application of state law in the instant action "destroys uniformity." A lack of uniformity standing alone, because of application of a rule consistent with state law, however, does not require the adoption of a federal rule. As the Court noted in *Three Rivers* (522 F.2d at 890), the application of a "federal" rule is called for only where the diversity of state rules of law threatens to impede the efficient operation of the federal statute.³ Petitioner has

³This Court noted in *United States v. Yazell*, 382 U.S. 341, 352 (1966), that traditional state interests would be overridden only where the clear and substantial national interests will suffer major damage if state law is applied. As recognized by the court in *Three Rivers*, the interpretation of a simple contract between two parties has been traditionally governed by state law. The court further found that the state law applied under the circumstances here presented was not incongruous with federal antitrust

(continued)

failed to show that there is any potential diversity of state law on the question at issue here. It is well settled that a release is a contract, normally to be interpreted by the law of jurisdiction having the greatest nexus to the parties, the subject matter and the performance. Pennsylvania is that jurisdiction. The Pennsylvania rule that extrinsic evidence of intent is not admissible to vary the terms of an unambiguous contract is the generally accepted rule. This being so, the adoption of a federal common law rule to govern this situation would offer no greater uniformity than presently exists—in sharp contrast to the situation in *Zenith*. The Court in *Three Rivers* explicitly distinguished *Zenith* on this very basis (522 F.2d at 890-891).

Even if *Zenith* is read as urging the proposition that a federal rule must be applied to govern all aspects of releases in antitrust cases, a reading nowhere suggested in that opinion, there is no conflict between the Third Circuit's decision here, based on *Three Rivers*, and the *Zenith* decision.

The *Three Rivers* opinion applied a "federal" rule. Once the court in *Three Rivers* concluded, correctly, that the principles enunciated in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), and in related decisions did not compel the application of state law, the choice of the applicable rule of interpretation of the release was entirely within its discretion.

The rule of interpretation which the Third Circuit decided to apply was clearly derived from the decisions of the Pennsylvania state courts, but the fact that it was so

objectives (522 F.2d at 891). Indeed, the Pennsylvania rule that extrinsic evidence will not be admissible to vary the terms of an unambiguous release is identical to the so-called "federal common law" rule whose application petitioner now seeks. *Redef's, Inc. v. General Electric Company*, 498 F.2d 95 (5th Cir. 1974). See *infra*, p. 12.

derived does not make it any less a "federal" rule. The oft-quoted statement of Justice Jackson in his concurring opinion in *D'Oench, Duhm & Co. v. F.D.I.C.*, 315 U.S. 447, 471-472 (1942), quoted in *Three Rivers*, makes this clear. He stated:

"A federal court...in a non-diversity case...may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state.... Federal common law implements the federal Constitution and statutes, and is conditioned by them. Within these limits, federal courts are free to apply the traditional common-law technique of decision and to draw upon all the sources of the common law...."

Thus a federal court, in fashioning a rule of "federal common law" may refer to state decisional law, and even give state law controlling effect. The Third Circuit concluded that Pennsylvania law should govern the interpretation of the release before it only after a lengthy scholarly analysis of its effect on the operation of the federal antitrust laws. The derivation of federal common law is nothing more than choice of the rule most appropriate to effectuate the purposes of the federal law, the very process followed by the Third Circuit in *Three Rivers*.

A decision identical to that made in *Three Rivers* was also made in *Virginia Impression Products Co. v. SCM Corporation*, 448 F.2d 262 (4th Cir. 1971), an antitrust case decided after *Zenith*, and in which this Court denied certiorari. 405 U.S. 936 (1972). In that case defendant alleged that plaintiff's action was barred by a release into which the parties had entered. Plaintiff made the usual claim — that extrinsic evidence of "intent" should be admitted to show that plaintiff had never intended to release antitrust claims.

The court, relying heavily on Virginia law, found that the release was unambiguous in its terms and that extrinsic evidence thus could not be admitted. Respondent submits that certiorari should be denied here, just as it was in *Virginia Impression Products*, because in this case, as in that one, there is no conflict with applicable decisions of this Court.

II. THE DECISION IN THE INSTANT CASE IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF ANY OTHER COURT OF APPEALS.

Petitioner has cited only *Redel's, Inc. v. General Electric Company*, 498 F.2d 95 (5th Cir. 1974), in support of its position that the decision of the Third Circuit in the instant case is in conflict with the rule in other Circuits.

Redel's, a former franchised dealer of General Electric (GE), filed an antitrust action against GE on January 21, 1972, making numerous claims of unlawful price discrimination for the period 1965 through 1971. GE moved for partial summary judgment, contending, *inter alia*, that a general release entered into by the parties in 1969 barred recovery by Redel's as to all liabilities which existed at the time the release was executed. The district court granted GE's motion for summary judgment for claims arising during this period, and the Court of Appeals affirmed. The court held that the language of the release was "unfettered by either patent or latent ambiguities" and that in "unmistakably clear" terms it barred plaintiff's claims. As a result, there could be "no jury consideration of extrinsic evidence as to its [the release's] scope." 498 F.2d at 100.

The District Court and Court of Appeals have made exactly the same determination in the instant case, which determination petitioner alleges is in conflict with *Redel's*. Petitioner asserts such a conflict by virtue of the allegedly different *approaches* taken in *Redel's* and in the instant case.

Petitioner argues that *Redel's* applied "federal" law, while the instant case, based on *Three Rivers*, applied "state" law, and that this Court should grant certiorari to resolve this conflict.

Even if petitioner's reading of *Redel's*—that the court there applied a federal rule to discern the intent of the parties — is accepted, there is no conflict between *Redel's* and the instant decision for two reasons. First, as discussed *supra*, *Three Rivers*, upon which the instant decision is based, can be interpreted as having itself applied federal law. Second, even if there were a clear conflict in approach between *Redel's* and the instant case, respondent submits that a mere conflict in approach, which has no effect on the final decision, is not the type of conflict which this Court should expend its limited time and resources to resolve.

The plain fact here is that the same substantive rule of interpretation of releases was applied in *Redel's* and in *Three Rivers*, upon which the instant decision is based. That rule holds that, absent an ambiguity in the language of the release, extrinsic evidence of the parties' intent will not be admissible. Petitioner attempted to bring such extrinsic evidence before both the District Court and the Third Circuit Court of Appeals and failed. There is no reason to believe petitioner would have fared any better before the Fifth Circuit which applied an identical rule in *Redel's*.

Thus, if petitioner were successful in obtaining a writ of certiorari, and succeeded on the merits of this case, the most that could be obtained would be a remand for reconsideration in light of the alleged "federal" rule applied in *Redel's*, the same substantive rule already applied here. There seems little doubt that the District Court and Court of Appeals, if later required to apply an identical rule of law under a different name, would reach the same conclusion already reached, i.e., that all of petitioner's claims arising prior to

September 7, 1972 are barred by the release. The result already reached would thus be reaffirmed at substantial, and needless, expense to the parties and the courts.

III. THE DECISION IN THE INSTANT CASE IS IN ACCORDANCE WITH PENNSYLVANIA LAW.

Petitioner has asserted that the Third Circuit in its decision below based on *Three Rivers* incorrectly construed Pennsylvania law in determining the intent of the parties to the release. At the heart of petitioner's claim is the suggestion that the release is somehow invalid under Pennsylvania law with respect to antitrust claims which were not discussed or specifically included in the release by the parties. Petitioner apparently believes that under Pennsylvania law it can introduce extrinsic evidence of its ignorance of potential antitrust claims in order to vary the terms of an unambiguous release. However, settled Pennsylvania law is to the contrary.

As accurately stated by Judge Forman, writing for the Court of Appeals for the Third Circuit in *Three Rivers*, under Pennsylvania law the language of the general release before it⁴ was unambiguous and thus could not be modified by extrinsic evidence. *Robert F. Felte, Inc. v. White*, 451 Pa. 137, 143-144, 302 A.2d 347, 351 (1973). Accordingly, full effect had to be given to such a release even as to allegedly unknown claims. *McClelland's Appeal*, 430 Pa. 284, 242 A.2d 438 (1968); *Emery v. Mackiewicz*, 429 Pa. 322, 240 A.2d 68 (1968); *Brill's Estate*, 337 Pa. 525, 12 A.2d 50, *cert. denied*, 311 U.S. 713 (1940). In *McClelland's Appeal* the Pennsylvania

⁴The operative phrase released claims which the parties "ever had, now have or which they . . . hereafter can, shall or may have." The parties in the instant case released each other from all claims which either of them "ever had, now has or may hereafter have" against the other. This language is of course virtually identical to that utilized in the release that was the subject of *Three Rivers*.

Supreme Court held the releasor's claim to be barred by the express terms of the release, the operative language of which provided for release "from all suits, damages, claims and demands whatsoever, in law and in equity . . ." (430 Pa. at 286, A.2d at 439). The court stated unequivocally that such language, even absent explicit reference to "unknown claims," could not be "clearer" or "more completely all-inclusive [and] all-embracing" (430 Pa. at 288, 242 A.2d at 439-440). Such a release was held to bar all claims, including claims unknown at the time of the execution of the release.

Two of the decisions cited by Famous Foods in support of its argument that unknown claims must be specifically released do not involve that subject at all: *Restifo v. McDonald*, 426 Pa. 5, 230 A.2d 199 (1967) (claims for contribution which had not accrued at the time of the execution of the release were not included therein); *In re F. H. McGraw & Company*, 473 F.2d 465 (3d Cir.), *cert. denied*, 414 U.S. 1022 (1973) (the release was ambiguous on its face and thus subject to interpretation by reference to extrinsic evidence).

The case of *Wm. A. Smith Contracting Co., Inc. v. Travelers Indemnity Company*, 467 F.2d 662 (10th Cir. 1972), is not authority for plaintiff's position. That the Court of Appeals for the Tenth Circuit may have misconceived Pennsylvania law does not argue for the imposition of yet another rule of law since such a new rule may also be misapplied. In any event, the court's brief mention of Pennsylvania law was by way of dictum and the sole citation for its statement that in Pennsylvania a release does not cover unknown claims was a Pennsylvania Superior Court case, *Cady v. Mitchell*, 208 Pa. Super. 16, 220 A.2d 373 (1966). *Cady* is completely distinguishable from the instant case. In *Cady*, the parties signed a release nine days after an automobile accident. In return they received approximately

\$130, representing the lowest repair estimate for their car. The circumstances showed that the parties were still nervous from the accident, that they were worried about the injuries to their children which had been provided for in separate releases, that the circumstances were very confused since much time had been consumed in obtaining three estimates for the repair work, that the releasee had intended only to seek release of property damage claims and had inserted the personal injury claims as an after-thought and that the party who was now suing for personal injury damages was out of the room when the release was discussed. The intermediate appellate court found that all of the facts showed possible overreaching by the releasee. The court was careful to distinguish that situation from an arms-length agreement between two corporations where the same equitable considerations would not be involved. The instant case would therefore not be governed by *Cady* because it did not involve personal injuries to individuals, but rather a business transaction between two substantial corporations which were starting a new period in their business relationship.

IV. THE INSTANT CASE DOES NOT PRESENT ANY IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

In an attempt to show that this case merits the Court's consideration, petitioner suggests that as a matter of law and/or public policy the ignorance of the plaintiff as to possible antitrust claims should invalidate the release regardless of what Pennsylvania law says.

There is no such rule of law in antitrust cases and public policy requires none, as many federal courts have held. Petitioner confuses ignorance of the *facts* upon which a potential claim may be based with ignorance of the *legal*

significance of those facts. At most, the releasee is only obligated to disclose the "factual predicate" for an antitrust claim if he is aware of material facts of which the releasor is ignorant. *Redel's, Inc. v. General Electric Co.* 498 F.2d 94, 100 (5th Cir. 1974). The same conclusion was also reached in *Three Rivers Motors*. In that case, it was found that plaintiff's knowledge of the existence of competition from company-owned dealerships formed a sufficient basis for release of the antitrust claims even though plaintiff had not known all of the details of the defendant's activities. The release in *Redel's*, like the releases in *Three Rivers* and the instant case, made no explicit reference to unknown claims. The instant case presents a much clearer basis for the application of the rule stated by the Third Circuit than did *Three Rivers* itself since, at the time the instant release was signed, plaintiff, who had participated actively in the day-to-day operations of the MFSA distribution program for more than twenty years, knew all of the details of the MFSA distribution system, which it now claims violated the antitrust laws, and the effect of that system on Famous Foods' business.

That it is not necessary to discuss all of the possible legal claims which might be included in a release was persuasively stated by the Court of Appeals for the Seventh Circuit in *Virginia Impression Products Co., Inc. v. SCM Corporation*, 448 F.2d 262 (4th Cir. 1971), *cert. denied*, 405 U.S. 936 (1972). In that case SCM canceled a dealership agreement with Virginia Impression ("VIP") and entered into a general settlement agreement which included a general release by VIP in its favor. Subsequently, VIP sued SCM, alleging violation of the antitrust laws. After finding that the plain meaning of the release precluded all claims, including antitrust claims, the court addressed itself to plaintiff's theory that the release was not a bar because plaintiff had not

been represented by counsel and had been unaware of the antitrust implications of the business activities of SCM:

The law imposes no obligation on a party to a general release, dealing at arms length, to reveal all the possible legal theories that the other may possibly use against him. The law merely requires one to reveal material facts if they are unknown to the others. . . . [Plaintiff] . . . knew as well as [defendant] all the material facts. [Footnote omitted]. At most he simply failed to appreciate their significance, and failed to consult a lawyer, a dereliction not chargeable to SCM Neither VIP's failure to appreciate the significance of the known facts, nor [its representative's] lack of expertise in the antitrust laws is sufficient to excuse VIP's compliance with the terms of the release. 448 F.2d at 265-266.

Petitioner's reliance on *Redel's, Inc. v. General Electric Corp.*, 498 F.2d 95 (5th Cir. 1974), is misplaced since the holding in that case is essentially identical to that of *Three Rivers* and the instant case, i.e., where the language of a general release in unambiguous, the releasor will be held to have released all claims, including antitrust claims. Extrinsic evidence is not admissible to vary the terms of such a release even where the releasor asserts that potential antitrust claims were unknown at the time the release was executed. 498 F.2d at 100.

Although District Judge Lynne indulged in dictum concerning a possible limitation on the use of releases in antitrust cases, he limited his discussion to the hypothetical situation of the releasee who withholds from the releasor *material facts* upon which a legal claim might be based. The court's peroration is couched in terms which clearly suggest deliberate overreaching on the part of the releasee, a factor which has not been alleged by petitioner and which is not supported by the record in this case since both parties were

aware of all of the facts material to petitioner's antitrust claim.

Rather, the case is governed by the principles set forth most aptly by the United States District Court for the District of Connecticut in *The Southern New England Distributing Corporation v. Admiral Corporation*, 1965 Trade Cas. ¶71,471 (D. Conn. 1965):

There is no reason for the court not to accept the plain meaning of this [release]. This is not a release of a personal injury claim where courts have shown an increasing tendency to avoid application of a release drawn in all-encompassing language. . . . The release in question was a part of a contract arrived at by two substantial corporations starting a new period in their business relationship. In doing so, they agreed to start the period with a clean slate. The court has no alternative but to "impose upon parties competent to act full responsibility for their actions." 1965 Trade Cas. at 81,120.

None of the cases cited by petitioner support its argument that a releasor who was aware of all material facts when he signed the release can later avoid its effect by claiming ignorance of the potential legal claims arising out of those facts.

Union Pacific Ry. Co. v. Artist, 60 F. 365 (8th Cir. 1894), involved the defense of release in an action for personal injuries. The court, faced with a routine matter of interpretation of a contract to which it devoted one paragraph of its opinion, determined the scope of the release by reference to the specific language of the instrument.

Equally inapposite is *Penn Mutual Life Insurance Co. v. Ashton*, 93 F.2d 565 (10th Cir. 1937), which held that the release was void because the releasee affirmatively misled the releasor by misrepresenting a material fact.

With the exception of *Redel's* discussed *infra*, none of the other cases cited by petitioner in Section B even alludes to the proposition for which petitioner has cited them, to wit, that ignorance of the releasor, coupled with knowledge of liability by the releasee, may void the release.

In addition, petitioner has also failed to offer any rationale for its conclusory statement that public policy has been violated under the circumstances presented. In fact, many cases have held that federal policy does not prohibit the enforcement of releases in antitrust cases. *Virginia Impression Products Co., Inc. v. SCM Corp.*, 448 F.2d 262 (4th Cir. 1971), *cert. denied*, 405 U.S. 936 (1972); *Duffy Theatres v. Griffith Consol. Theatres*, 208 F.2d 316 (10th Cir. 1953), *cert. denied*, 347 U.S. 935 (1954); *Suckow Borax Mines Consolidated v. Borax Consolidated, Limited*, 185 F.2d 196 (9th Cir. 1950), *cert. denied*, 340 U.S. 943 (1951). See *Taxin v. Food Fair Stores, Inc.*, 287 F.2d 448 (3d Cir.), *cert. denied*, 366 U.S. 930 (1961) (summary judgment granted to defendant in antitrust suit on the basis of a release executed by plaintiff).

Petitioner's brief has cited no authority—and none appears to exist—for its novel argument that the parties' failure to terminate all business dealings on the date of the release ought to invalidate as a matter of law a release of antitrust claims which had accrued prior to that date. Complete cessation of all business dealings between the parties to a release is not a condition precedent to its enforcement, even in antitrust cases. Continuity of allegedly illegal activity does not validate claims otherwise barred. For example, the statute of limitations often limits the ability of the plaintiff in an antitrust suit to recover damages for the entire period during which the illegal activity continued. Petitioner surely is not suggesting that statutes of limitations are against public policy where they prevent recovery on antitrust claims accruing prior to the cut-off date.

None of the cases cited by petitioner in Section C of its petition suggests a contrary result. Petitioner has itself stated that those cases hold only that a release of prospective antitrust violations (those accruing after the date of the release) is against public policy. Respondent has never suggested that claims accruing after the date of the instant release are barred and that issue has not been joined before this Court.

As a matter of fact, the two cases relied upon most heavily by petitioner, *Redel's* and *Zenith*, involved continuation of the allegedly illegal activity after the date of the release. In neither of those cases did the Court of Appeals for the Fifth Circuit nor this Court suggest that the release which barred prior antitrust claims was void because the illegal activity continued after the date of the release. Petitioner's novel suggestion that upholding a release under such circumstances is tantamount to bribery is unsupported by citation to a single authority and is directly contrary to the decisions of this and other courts concerning the effect of releases.

In its discussion of public policy, petitioner has overlooked important public policy considerations supporting enforcement of releases even in antitrust cases. One such consideration is the necessity for certainty in contractual arrangements. Enforcement of the release under the circumstances here presented is mandated by the basic principle that if parties are not held to the plain meaning of their words, contracts will become useless. Another important consideration is the public policy favoring settlement of disputes. The law encourages the private settlement of disputes, thus raising a presumption in favor of the enforcement of releases. *Dobbins v. Kawasaki Motors Corp.*, 362 F. Supp. 54 (D. Ore. 1973) (summary judgment granted to defendant in antitrust suit on the basis of a release

executed by plaintiff); *S. E. Rondon Co. v. Atlantic Richfield Co.*, 288 F. Supp. 879 (C.D. Cal. 1968) (summary judgment granted to defendants in antitrust suit on the basis of release executed by plaintiff). A private antitrust claimant is encouraged to compromise his cause of action "in the same manner as any other tortious act may be compromised and settled." *Solar Electric Corp. v. General Electric Co.*, 156 F. Supp. 51 (W.D. Pa. 1957).

Petitioner has offered no substantial reason for overturning the well-established precedents acknowledging the importance of these considerations in antitrust cases.

CONCLUSION

Since the decision in the instant case does not conflict with any decision of this Court nor with the decision of any United States Circuit Court of Appeals, is in accordance with Pennsylvania law and does not present an important question of federal law which should be settled by this Court, the Petition for Certiorari should not be granted.

Respectfully submitted,

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